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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,110	09/29/2003	Joseph A. Marino	MTIZ 2 00002	2431
7590		03/07/2007	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & McKEE, LLP 7th Floor 1100 Superior Avenue Cleveland, OH 44114-2516			MAI, HUY KIM	
			ART UNIT	PAPER NUMBER
			2873	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/07/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/674,110	MARINO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Huy K. Mai	2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 September 2003.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-35 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

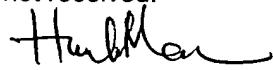
#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 29 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
**Huy Mai**  
**Primary Examiner**

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>9/03</u> .	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) filed Sept. 29, 2003 is acknowledged.

### ***Claim Objections***

2. Claims 24-31 and 33-35 are objected to because of the following informalities: Claim 24 depends upon itself. Similarly, claim 33 depends upon itself. It is believed that claims 24 and 33 depends upon claims 23 and 32, respectively. Furthermore, the preamble in the dependent claims 24-31 called for “The system”. There is no such a system is defined. Accordingly, claims 24-31 and 33-35 are improper dependent claims for failing to further limit the subject matter of a previous claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 5, 7, 13, 14, 16-18, 29-31 and 33-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrases “the vision test protocol” (claim 7, line 2) and “the vision screening test protocol” (claim 18, line 3) have no antecedent basis.

Regarding claims 5 and 35, the phrase “a visual testing program in accordance with *standards* (emphasized) of the ophthalmologic community” render claims indefinite because a vision test program in the art of displaying a vision test, recording the patient’s response etc could be considered to be conventional or standard.

Similarly the phrases “the vision test protocol in accordance with standards of the ophthalmologic community” (claim 17) and “said storing means using standards developed by the ophthalmologic community” (claims 29-31) also renders claims indefinite.

Regarding claim 16 and 17, the step of “developing the vision test protocol” render claim indefinite because it is not understood what is developed in the vision test protocol. Is the developed vision test protocol different from the vision test protocol stored in the CPU? What are the differences?

Regarding claims 13 and 14, the limitations “the step of displaying vision test results” are undefined. It appears that claims 13 and 14 dependent from claim 11.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 32 is rejected under 35 U.S.C. 102(b) as being anticipated by Kuperman et al (4,591,998).

Kuperman et al (Figs. 1A-2, column 7, lines 11-50) discloses a vision test protocol for use with a vision test apparatus wherein the apparatus includes a display device 100, a central processing unit (200, 206) operatively communicating with the display device 100, and a controller 114 operatively communicating with the display device 100, wherein the central processing unit stores more than one type of vision test, the vision test protocol comprising

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means for automatically changing at least a portion of a vision test displayed on the display device in response to input received by the controller (see column 7, lines 29-31).

***Allowable Subject Matter***

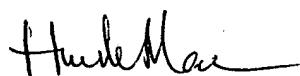
7. Claims 1-4,6,8-12,15,19-22 and 23 are allowed.
8. Claims 5,7,13,14,16-18,24-31,33-35 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy Mai whose telephone number is (571) 272-2334. The examiner can normally be reached on M-F (8:00 a.m.-4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky L. Mack can be reached on (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1562.



Huy Mai  
Primary Examiner  
Art Unit 2873

HKM/  
March 2, 2007